

## NOTICE OF VIOLATION

**ISSUED TO:** United States Department of Energy  
Idaho Operations Office  
1955 Fremont Ave.  
Idaho Falls, ID 83401

Bechtel BWXT Idaho, LLC  
P.O. Box 1625  
2525 North Fremont Ave.  
Idaho Falls, ID 83415

On August 25 - 29, 2003, the Idaho Department of Environmental Quality (DEQ) conducted an inspection at the United States Department of Energy (DOE) Idaho National Engineering and Environmental Laboratory (INEEL). The INEEL is a hazardous waste treatment, storage and disposal facility, owned and operated by the DOE, with Bechtel BWXT Idaho, LLC (BBWI) as the primary operating contractor. Pursuant to the Hazardous Waste Management Act of 1983 (HWMA), Idaho Code §§ 39-4406 and 39-4413, the Idaho Environmental Protection and Health Act (EPIHA), Idaho Code §§ 39-108 and the Final Partial Permit (Permit Number ID4890008952), DEQ has determined that the following violations of the Hazardous Waste Management Act of 1983, Idaho Code § 39-4401, et seq., and the Idaho *Rules and Standards for Hazardous Waste*, IDAPA 58.01.05, et seq., have apparently occurred at the INEEL facility located near Idaho Falls in Bingham, Bonneville, Butte, Clark and Jefferson counties, Idaho.

### VIOLATIONS

#### Idaho Nuclear Technology and Engineering Center (INTEC)

##### Violation No. 1

Legal Provision Violated: IDAPA 58.01.05.008 *Rules and Standards for Hazardous Waste* [40 CFR §§ 264.15(a), 264.15(c), and 264.174] and Permit Conditions II.E.3, III.I, and Attachment 4, section F-2b(1), of the INEEL HWMA/RCRA Permit, Volume 18 – INTEC.

40 CFR § 264.15(a) states in relevant part:

“The owner or operator must inspect his facility for malfunctions and deterioration...often enough to identify problems in time to correct them before they harm human health or the environment.”

40 CFR § 264.174 states in relevant part:

“At least weekly, the owner or operator must inspect areas where containers are stored...”

Permit Condition III.I. states:

“The Permittee shall inspect the permitted container storage and treatment areas, in accordance with IDAPA 58.01.05.008 [40 CFR § 264.174] and the Inspection Schedules contained in Attachment 4 of this Permit, to detect leaking containers and deterioration of containers and the containment system caused by corrosion and other factors.”

Attachment 4, section F-2b(1) states in relevant part:

“Facility personnel visually inspect the waste containers and the container storage areas addressed in this permit on a weekly basis, when waste is present.”

40 CFR § 265.15(c) states in relevant part:

“The owner or operator must remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard.”

Permit Conditions II.E.3 states:

“The Permittee shall remedy, as required by IDAPA 58.01.05.008 [40 CFR § 264.15(c)], any deterioration or malfunction discovered by an inspection.”

Based on a review of inspection records obtained at the time of the August 25 – 29, 2003 inspection, DOE/BBWI failed to perform weekly inspections of containers stored in Room 205 within Building CPP-659 between October 9, 2002 and November 20, 2002. INTEC personnel attempted to perform an inspection of the containers stored in Room 205 on October 9, 2002, but were unable to perform the inspection due to failure of lighting equipment in the room. DOE/BBWI waited until November 14, 2002 to install temporary lighting to correct this issue. DOE/BBWI failed to remedy the equipment malfunction in a timely manner. Thirty-four (34) days passed before the temporary lighting was installed and a total of six (6) weekly inspections were not performed.

**Penalty Assessed:      \$3,800.00 per week for six continuing weeks of violation = \$22,800.00**

## **Violation No. 2**

Legal Provision Violated

IDAPA 58.01.05.009 *Rules and Standards for Hazardous Waste* [40 CFR § 265.15(d)]

40 CFR § 265.15(d) states:

“The owner or operator must record inspections in an inspection log or summary. He must keep these records for at least three years from the date of the inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.”

Based on a review of inspection records obtained at the time of the August 25 – 29, 2003 inspection, DOE/BBWI failed to record the time and the name of the inspector for hazardous waste tank system inspections that took place in the CPP-604 WL-129 East Evaporator Cell on April 17, April 24, May 1 and May 6, 2003.

**Penalty Assessed: \$150.00 per day for four separate days of violation = \$600.00**

**Violation No. 3**

Legal Provision Violated: IDAPA 58.01.05.009 *Rules and Standards for Hazardous Waste* [40 CFR §§ 265.15(c) and 265.32(c)]

40 CFR § 265.15(c) states in relevant part:

“The owner or operator must remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard.”

40 CFR § 265.32(c) states in relevant part:

“All facilities must be equipped with the following...

(c) Portable fire extinguishers..

Based on a review of monthly emergency equipment inspection records obtained at the time of the August 25 – 29, 2003 inspection, DOE/BBWI failed to locate and/or replace a fire extinguisher in the CPP-604 sample corridor entry which was noted in inspection records as missing from November 6, 2002 to December 12, 2002. INTEC representatives indicated the fire extinguisher was not actually missing during this timeframe, but was hidden by material being used in a construction project. Due to the construction project, the fire extinguisher was apparently not visible, available, and/or accessible for use in case of a fire from November 6 to December 12, 2002, a total of thirty-six (36) days. DOE/BBWI failed to remedy the noted deficiency in a timely manner.

DOE has demonstrated a history of non-compliance in regards to failure to remedy deficiencies noted during facility inspections. DOE was previously cited for failure to remedy deficiencies in Notices of Violation dated May 25, 1999 and August 7, 2000. In the resulting Consent Orders dated January 11, 2000 and January 25, 2001 respectively, DOE agreed to implement, maintain, and continue to use a documented process to ensure that all deficiencies found on RCRA inspections are properly recorded, tracked, and resolved.

**Penalty Assessed: \$7,000.00 plus 25% recalcitrance = \$8,750.00**

**Violation No. 4**

Legal Provision Violated: IDAPA 58.01.05.009 *Rules and Standards for Hazardous Waste* [40 CFR § 265.195(a)(2), (a)(4), and (c)].

40 CFR § 265.195 (a)(2), (a)(4), and (c) state in relevant part:

“(a) The owner or operator must inspect, where present, at least once each operating day:

(2) The aboveground portions of the tank system, if any, to detect corrosion or releases of waste;

(4) The construction materials and the area immediately surrounding the externally accessible portion of the tank system including secondary containment structures (e.g. dikes) to detect erosion or signs of releases of hazardous waste (e.g. wet spots, dead vegetation);

(c) The owner or operator must document in the operating record of the facility an inspection of those items in paragraphs (a) and (b) of this section.”

Based on a review of inspection records obtained during the August 25 – 29, 2003 inspection, DOE/BBWI failed to perform daily visual inspections of the CPP-604 WL-129 East Evaporator Cell tank system and secondary containment structure during in-cell maintenance work that occurred on April 21, 2003 and April 28, 2003.

**Penalty Assessed: \$2,600.00 per day for two separate days of violation = \$5,200.00**

#### **Power Burst Facility (PBF)**

#### **Violation No. 5**

Legal Provisions Violated: IDAPA 58.01.05.008 *Rules and Standards for Hazardous Waste* [40 CFR §§ 264.15(c) and 264.175(b)(1)] and Permit Conditions II.E.3. and III.H of the HWMA/RCRA Storage and Treatment Permit for the WERF/WROC Complex.

40 CFR § 264.15(c) states in relevant part:

“The owner or operator must remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard.”

40 CFR § 264.175(b)(1) states:

“A containment system must be designed and operated as follows: A base must underly the containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed.”

Permit Condition II.E.3 states:

“The Permittee shall remedy, as required by IDAPA 58.01.05.008 [40 CFR § 264.15(c)], any deterioration or malfunction discovered by an inspection.”

Permit Condition III.H. states in relevant part:

“The Permittee shall ensure that the secondary containment systems are free of cracks or gaps and sufficiently impervious to prevent any migration of waste or accumulated liquid out of the system to the soil, groundwater, or surface water any time...”

At the time of the August 25 – 29, 2003 inspection, DOE/BBWI failed to repair cracks, chips and obvious scuff marks, in the WERF Waste Storage Building, PER-623, Room 104, that penetrated the secondary containment system epoxy floor coating and left the absorptive concrete exposed to possible leaks, spills and accumulated precipitation. Hazardous waste was being stored in Room 104 at the time of the inspection. On September 23, 2003, DOE/BBWI ceased storing hazardous waste in Room 104. DOE/BBWI noted damage to the secondary containment system in the WERF Waste Storage Building weekly inspection records beginning May 19, 2003, but failed to initiate repairs or remove hazardous waste from the area until September 23, 2003.

DOE has demonstrated a history of non-compliance in regards to failure to maintain the SCS in this area and failure to remedy deficiencies noted during facility inspections. DOE and BBWI were cited for failure to maintain the SCS in this area by Warning Letter dated December 9, 2002. DEQ also informed DOE and BBWI of DEQ's position regarding SCS maintenance and repair by letter dated May 7, 2003.

DOE was previously cited for failure to remedy deficiencies in Notices of Violation dated May 25, 1999 and August 7, 2000. In the resulting Consent Orders dated January 11, 2000 and January 25, 2001 respectively, DOE agreed to implement, maintain, and continue to use a documented process to ensure that all deficiencies found on RCRA inspections properly recorded, tracked, and resolved.

Additionally, DOE/BBWI realized an economic benefit while operating in non-compliance with the requirement to maintain the SCS, thus resulting in an unfair advantage over other facilities in the regulated community.

**Penalty Assessed:** (\$900.00 per day for 125 continuing days of violation plus 25% recalcitrance) + \$5,401.00 economic benefit = \$146,026.00.

**TOTAL PENALTY ASSESSED: \$183,376.00**

#### **TIMETABLE**

DOE and BBWI may request a compliance conference with DEQ to explain the alleged violations and discuss entry into a Consent Order which will include payment of assessed penalties, and a plan to remedy damage caused by any violation and assure future compliance. To arrange a compliance conference, DOE and BBWI must contact DEQ within fifteen (15) days after receipt of this Notice of Violation. Failure to request a conference within fifteen (15) days after receipt of this Notice of Violation, or reach agreement on a Consent Order within sixty (60) days may result in a civil enforcement action in district court for penalties, injunctive relief, and costs including attorney fees.

Inquiries or correspondence concerning this Notice of Violation shall be directed to:

D. Michael Gregory, Hazardous Waste Enforcement Coordinator  
Hazardous Waste Program  
Waste Management and Remediation Division  
Idaho Department of Environmental Quality  
1410 N. Hilton  
Boise, Idaho 83706-1255

DATED THIS 17<sup>th</sup> day of December 2003

A handwritten signature in dark ink, appearing to read "Stephen Allred", is written over a horizontal line.

C. STEPHEN ALLRED, DIRECTOR  
Idaho Department of Environmental Quality